

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,385

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a fifty-three-year-old man with a G.E.D., although his formal education ended in eighth grade. He has worked in the past as a mill operator, an assembly line worker for a ladder company and most recently as a ground technician for a ski resort. He was injured on his last job in January of 1993.
2. Following the petitioner's injury, he went through physical therapy and work hardening and returned to work in June of 1993 on a part-time basis. He quit that job when he was changed to a night shift because he could not see well enough to drive at night.
3. Since his injury, the petitioner has been treated for pain in his lower back which radiates into his hip and legs and has become considerably worse in the last year. It bothers him both when he sits and stands and he now walks with a cane for balance not only because of that pain but also because his knees "pop-out" as a residual of surgery some years ago. He takes medication for the pain which makes it tolerable but he still loses control of his legs from time to time and has fallen a total of some fifteen to twenty times since the accident, once breaking a toe.
4. The petitioner has been seen by an orthopaedic consultant who could not find an etiology for his pain but observed in August of 1994 that his motion and flexion were limited by pain. He advised the petitioner to engage in exercises and to be as active as he could.
5. The petitioner's treating physician has diagnosed his condition as osteoarthrosis and has limited him to sitting, standing or walking for no more than one to two hours at a time and to lifting no more than ten

pounds on an occasional basis. His physician also believes he may have carpal tunnel syndrome which limits the use of his hands due to pain and cramping.

6. The petitioner's ophthalmologist has diagnosed him as having impaired vision which is correctable with glasses but which causes his eyes to be sensitive to glare. This glare interferes with his ability to work outside or in bright lighting situations.

4. The petitioner at present is in constant pain in his back and neck which pain requires him to change position when he sits for more than five to ten minutes. He has difficulty getting out of a chair. He is unable to grasp or grip small items such as dimes or screws and must use two hands to hold a coffee cup. He has difficulty sleeping due to muscle spasms in his legs and arms and must frequently rest during the day. He is unable to do his own housework, cooking, meals or laundry. He cannot climb stairs or ride for long periods in a car.

ORDER

The decision of the Department is reversed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The medical evidence shows that the petitioner is able at best to perform only a sedentary range of activities due to a combination of impairments.⁽¹⁾ His probable carpal tunnel syndrome has also severely affected his ability to do a wide range of sedentary work. The medical-vocational guidelines provide that a person who is "closely approaching advanced age" (50-54), has a history of unskilled work and is limited to sedentary activities must be found to be disabled. Rule 201.12, 20 C.F.R. § 404, Subpart P, Appendix II. Therefore, the decision of the Department is reversed.

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1. Sedentary work is defined in the regulations as lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. § 416.967(a).